QUESTION PRESENTED

Does the First Amendment prohibit a State from criminalizing the election-day display and distribution of campaign materials and the solicitation of votes regarding the election being held that day, within 100 feet of the entrance to polling places, on property generally accessible to the public at large, while permitting all non-political messages, as well as political messages not directly pertaining to that election, to be communicated at the same locations?

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No. 90-1056

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

CHARLES W. BURSON, Attorney General and Reporter
for the STATE OF TENNESSEE,

Petitioner,

vs.

MARY REBECCA FREEMAN,

Respondent.

BRIEF OF RESPONDENT

RELEVANT STATUTES

In addition to the statutes set forth in petitioner's brief ("Pet. Br. ___"), other relevant Tennessee statutes are contained in a statutory addendum to this brief ("Add. ___a"). All references to the Tennessee Code are to the 1972 edition unless otherwise indicated.

STATEMENT OF THE CASE

This case is before the Court on writ of certiorari to the Supreme Court of Tennessee to review that court's ruling that Tennessee Code Annotated §2-7-111 (Pet. Br. 2-3), which prohibits the distribution of campaign literature, the display of campaign materials, and the solicitation of votes in or near to polling places,

and Tenn. Code Ann. § 2-19-119 (Add. 5a), which fixes criminal penalties for the violation of § 2-7-111, are facially invalid under the First Amendment to the United States Constitution. *Freeman v. Burson*, 802 S.W.2d 210, 214 (Tenn. 1990) (Petition for Writ of Certiorari 7a-20a) ("Pet. App. ___a"). In order to understand why that ruling is correct, it is first necessary to consider the operation of polling places in Tennessee as they are affected by § 2-7-111.

Polling places in Tennessee are located, when practicable, in public schools and other public buildings, such as firehalls and public community centers, but they may also be located in private buildings, *e.g.*, churches, private schools and private community centers. See Tenn. Code Ann. § 2-3-107 (Add. 1a). These buildings are used by the State only on election days and otherwise revert to their normal activities; indeed, these facilities may also be used on election days for their regular purposes while simultaneously being used as polling places.

Tennessee Code § 2-7-111 burdens the rights of free expression in three different respects. The first involves a prohibition of speech and conduct inside the building in which the polling place is located, where "the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on any question are prohibited." § 2-7-111(b). Respondent did not challenge this restriction, and the Supreme Court of Tennessee did not address restrictions inside the polling place, other than to note (802 S.W.2d at 213; Pet. App. 15a), that the State has shown a compelling interest (albeit one not advanced by § 2-7-111) in banning solicitations of voters or distribution of campaign materials within the polling place itself -- a point which respondent readily concedes.

The second kind of restriction, which was the focus of most of the proof at trial, prohibits these election-related activities within a 100-foot radius of every entrance to a polling place. Proof at trial showed that in many instances the statutorily-prescribed 100 feet from the entrance to the polling place includes public streets and sidewalks, as well as parking lots for the polling place itself. (802 S.W.2d at 213; Pet. App. 15a; see also, Joint Appendix ("JA") 23-24, 42). Respondent testified that this boundary has, at some polling places, prevented her from soliciting voters. (JA 23-

24). In addition to interfering with efforts to solicit votes directly, the law also forbids, within the 100-foot radius, the placing on the ground or the carrying of signs or posters regarding the pending election, and even extends to the wearing of caps or shirts with a candidate's name on it. (*Id.* at 42).[1]

The third kind of restriction prohibits only the display of campaign posters, signs, or other campaign materials on or in any building or on the grounds of any building in which a polling place is located. Thus, a person could lawfully verbally solicit votes "on the grounds" of the polling place more than 100 feet from the entrance, but the carrying of signs and, in all probability, the distribution of handbills or circulars at such a location, or the parking of a vehicle with a partisan bumper sticker on polling place grounds outside the 100-foot boundary, may also constitute a prohibited "display" of campaign literature.[2]

Proof at trial showed that in-person solicitation of voters at polling places is especially important for races for lesser-known offices, which are typically located near the bottom of the ballot, and in district-specific political races where other means of communication, such as paid advertising, would not be cost-effective. (JA 21-23).

This action was filed in the Chancery Court for the State of Tennessee at Nashville on July 27, 1987. Respondent sought declaratory and injunctive relief as to the challenged statutes on the ground that they violate the First and Fourteenth Amendments to the United States Constitution and corresponding

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[1] In twelve of Tennessee's ninety-five counties, the boundary extends to three hundred feet. Tenn. Code Ann. § 2-7-111(a). The predecessor of the petitioner Attorney General (an original defendant in the trial court), however, has opined that this distinction is unconstitutional according to Article XI, § 8 of the Constitution of the State of Tennessee. (Addendum to Brief in Opposition to Petition for Writ of Certiorari, 1a-5a.) While this issue was raised in the pleadings, the Supreme Court of Tennessee did not reach it.

[2] Proof at trial suggested that carrying signs and handing out literature "on the grounds" beyond the 100-foot boundary would be permitted but putting signs into the ground or on the building is not. (JA 35-36). *But see United States v. Grace*, 461 U.S. 171, 176 (1983) (distribution of leaflets deemed to be the "display [of a] flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement" within the meaning of 40 U.S.C. § 13k.

provisions of the Tennessee Constitution. At a bench trial conducted on October 24, 1988, respondent, a long-time political party activist, testified about how the 100-foot boundary had limited her ability to solicit votes at or near polling places. (JA 20-24). Her proof showed that the 100-foot boundary sometimes extends across the street from the entrance to a polling place. (*Id.* at 24). She testified that she had received political communications at the polling place, and that in some cases her vote had been swayed by information she had received at the polls. (*Id.* at 28-29).

Respondent has never asserted a right nor averred any intention to solicit votes inside the polling place. Rather, her case challenged only the restrictions on soliciting votes outside. (JA 18-24). Petitioner's conjecture (*id.* at 40, 48-49) about what might happen if solicitation were permitted inside a polling place is irrelevant since respondent claims no right even to enter a polling place for any purpose other than to vote; indeed, another Tennessee statute would prohibit any such unauthorized entry. See Tenn. Code Ann. § 2-7-103. (Add. 1a-2a).

The only witness presented by the State was Constance Ann Alexander, who was then employed as Registrar at Large for Davidson County and who had extensive experience with the conduct of elections. (JA 33-34). She offered as the sole justification for the challenged statute her prediction as to what would happen *inside* the polling place absent the 100-foot buffer zone *outside* of it. She testified that in her opinion, if the 100-foot boundary were abolished, there would be "total havoc," in that there would be room for error in totaling the votes and the polling place would be overcrowded. (JA 39-40). At no time did she suggest that any harm would occur outside the premises, that anyone would be obstructed from entering the building, or that any other adverse effects would occur without the statute.

In a Memorandum Opinion filed April 26, 1989 (Pet. App. 1a-6a), the Chancellor upheld the challenged statutes as a content-neutral time, place, and manner restriction, and a Final Order dismissing the Complaint was entered on May 5, 1989. (JA at 50-51). Respondent appealed as of right to the Supreme Court of Tennessee, which, in a 4-1 decision announced October 1, 1990 (802 S.W.2d 210; Pet. App. 7a), reversed the decision of the Chancellor and declared the challenged statutes unconstitutional under the First Amendment. (802 S.W.2d at 214; Pet. App. 18a).

The Supreme Court of Tennessee, applying the "strict scrutiny" standard of review, found: (1) that § 2-7-111 is impermissibly "content-based because it regulates a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and a certain category of speakers, campaign workers" (802 S.W.2d at 213; Pet. App. 14a); (2) that, while the State has an interest in maintaining peace, order, and decorum at the polls and preserving the integrity of the electoral process, the State had failed to show that the burden placed on free speech rights is justified by a compelling state interest in the 100-foot radius (802 S.W.2d at 213; Pet. App. 14a-15a); (3) that the State had failed to show that the statute is narrowly tailored to advance the State's interest (802 S.W.2d at 213; Pet. App. 15a); and (4) that the statute is not the least restrictive means to serve the State's interests (802 S.W.2d at 214; Pet. App. 17a). Accordingly, it did not reach the claims based on the Tennessee Constitution.

SUMMARY OF ARGUMENT

The Supreme Court of Tennessee correctly applied long-standing principles of First Amendment jurisprudence, reflected in numerous decisions of this Court, in applying the strict scrutiny standard of review to the challenged statutes. The challenged statutes criminalize core political expression -- and nothing else -- even though "First Amendment protection is 'at its zenith'" when applied to political speech. *Freeman v. Burson*, 802 S.W.2d at 212; Pet. App. 13a, quoting *Meyer v. Grant*, 486 U.S. 414, 425 (1988).

The state court correctly ruled that Tenn. Code Ann. § 2-7-111 is content-based and that application of the time, place, and manner analysis is inappropriate. *Cf. Boos v. Barry*, 485 U.S. 312, 318-21 (1988). The distinction urged by petitioner between "content-based" regulations of speech and so-called "subject matter-based" regulations (Pet. Br. 16) is completely untenable. This Court has repeatedly held that "a constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech[,]" but rather "must be applicable to all speech irrespective of content." *Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 536 (1980).

The challenged statutes not only unconstitutionally limit the right of the speakers to disseminate election information, but deny the voting public the opportunity to receive political communications. The First Amendment "prohibit[s] government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978).

Even if time, place, and manner analysis were applicable, the challenged statutes are still unconstitutional because, as the Tennessee Supreme Court found, they are not narrowly tailored to serve the governmental interests asserted by the State, which are solely to protect the sanctity of the ballot place itself. These statutes prohibit far more speech than is necessary to achieve the asserted governmental interests, since all displays or distributions of printed materials and solicitations of votes are forbidden, without regard to whether such communications are disruptive or peaceable. Moreover, as the Tennessee court concluded, existing Tennessee statutes governing conduct at or near to polling places are adequate to prevent voter harassment or intimidation, interference with election officials' duties, or the presence of unauthorized persons inside polling places, without burdening the pure speech banned by § 2-7-111.

The alternative channel suggested by the State, communication with voters outside the 100-foot boundary, is inadequate and ineffective, as the trial testimony revealed. More importantly, "[o]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 76-77 (1981).

ARGUMENT

The matter at bar touches constitutional interests of the first magnitude. "A State's broad power to regulate the time, place and manner of elections 'does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens.'" *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 222 (1989), quoting *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217 (1986). The criminal statutes challenged here "directly affect[] speech which

'is at the core of our electoral process and of the First Amendment freedoms.'" *Eu*, 489 U.S. at 222-23, quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

This Court has recognized repeatedly that debate on the qualifications of candidates is integral to the operation of the system of government established by our Constitution. Indeed, the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. The election campaign is a means of disseminating ideas as well as attaining political office. *Eu*, 489 U.S. at 223; *Buckley v. Valeo*, 424 U.S. 1, 14 (1976); *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966); *Illinois Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979).

The Court in *Tashjian*, *supra*, described its analytical task as to state election statutes challenged on First Amendment grounds:

> We begin from the recognition that constitutional challenges to specific provisions of a State's election laws cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions.... Instead, a court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It must then identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

479 U.S. at 213-14 (citations omitted).

I. BECAUSE § 2-7-111 IMPOSES CONTENT-BASED RESTRICTIONS ON POLITICAL SPEECH, IT MUST, BUT CANNOT, PASS STRICT SCRUTINY.

"Legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guaran-

tees of the First Amendment." *Meyer v. Grant*, *supra*, 486 U.S. at 428, quoting *Buckley v. Valeo*, 424 U.S. 1, 50 (1976). Even a cursory reading of Tenn. Code Ann. § 2-7-111 reveals that this statute does violence to established First Amendment principles because it restricts one and only one category of speech -- that directly relating to elections for public office and to other measures that appear on the election day ballot.

A content-based restriction on political speech in a public forum must be subjected to the most exacting scrutiny. *Boos v. Barry*, *supra*, 485 U.S. at 321. As the Supreme Court of Tennessee correctly recognized (802 S.W.2d at 213; Pet. App. 14a), § 2-7-111 by its own terms criminalizes the communication of "a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and [punishes] a certain category of speakers, campaign workers."

This Court has time and again ruled that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 65 (1983); *Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York*, *supra*, 447 U.S. at 537; *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 64 (1976) (per Justice Stevens joined by three other Justices); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 776 (1976); *Hudgens v. National Labor Relations Board*, 424 U.S. 507, 520 (1976); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 215 (1975).

As the Court observed in *First National Bank of Boston v. Bellotti*, *supra*, 435 U.S. at 784-85, "[i]n the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." That constitutionally forbidden course of action, however, is precisely what the Tennessee General Assembly has chosen by enacting § 2-7-111, which imposes a direct prohibition on dissemination of a particular type of-message and no other. For example, a person may lawfully wear a jacket graphically expressing his sentiments about the draft as he enters a Tennessee polling place, *cf. Cohen v. California*, 403 U.S. 15 (1971); however, if that same person affixes to that jacket a

lapel badge bearing the likeness of a political candidate on that day's ballot, he risks going to jail.

This Court has repeatedly held that "the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York*, *supra*, 447 U.S. at 537. *See also Boos v. Barry*, *supra*, 485 U.S. at 319 (per Justice O'Connor, with two Justices concurring and five Justices concurring in part); *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987); *Federal Communications Commission v. League of Women Voters of California*, 468 U.S. 364, 384 (1984); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 519 (1981) (plurality opinion); *Carey v. Brown*, 447 U.S. 455, 462 n.6 (1980).

This Court has recognized very few exceptions to these principles, and those that it has have primarily involved speech which falls completely outside the protection of the First Amendment, *i.e.*, "utterances [which] are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (fighting words); *Roth v. United States*, 354 U.S. 476, 485 (1957) (obscenity); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (false statements of fact); *New York v. Ferber*, 458 U.S. 747, 764 (1982) (child pornography).

Within the realm of First Amendment-protected speech, this Court has sometimes sustained regulations which treat certain categories of "lesser" protected speech differently from speech which is afforded "greater" protection, based upon the subject matter of the expression. These decisions have primarily involved commercial speech,[3] *see e.g.*, *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, *supra*, 447 U.S. at 563, and speech related to a variety of sexual topics. *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 70-71 (1976); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 49 n.2

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[3] Even in the area of "commercial speech," prohibitions "directed at speech itself, and . . . intimately related to the process of governing" are subject to strict scrutiny analysis. *First National Bank v. Bellotti*, *supra*, 435 U.S. at 786.

(1986) (zoning of pornographic movie theaters); *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978) (radio broadcast of "indecent," but non-obscene, language); *Barnes v. Glen Theatre, Inc.*, 59 U.S.L.W. 4745 (1991) (nude dancing). However, this Court has never countenanced *more* stringent regulation of core political speech than other subjects of expression, and it should now reject the proposal to break new ground under the First Amendment urged by petitioner.

Petitioner's brief, at 12-14, relies upon *dictum* in the plurality opinion in *Boos v. Barry*, *supra*,[4] to suggest that the challenged statutes are properly analyzed as "content-neutral" regulations of the time, place, and manner of speech according to the so-called "secondary effects" doctrine of *City of Renton v. Playtime Theatres*, *supra*. A careful reading of the plurality and concurring opinions in *Boos*, however, establishes that petitioner's reliance is misplaced. The statutes invalidated by the Supreme Court of Tennessee, like the portion of the District of Columbia regulation invalidated by this Court in *Boos*, burden only persons who communicate explicitly political messages (in a quintessential public forum), while speakers of other messages are left unaffected.

While a regulation of speech that serves purposes unrelated to the content of expression may be deemed content-neutral, even if it has an incidental effect on some speakers or messages but not others, *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), that is not this case. Here, as in *Boos* (and unlike in *Renton*), "the government has determined that an entire category of speech . . . is not to be permitted." 485 U.S. at 319 *But see Renton*, 475 U.S. at 54 ("Renton has not used 'the power to zone as a pretext for suppressing expression'"). There is absolutely no basis in this record to conclude that the prohibited political speech has any kind of effect, whether "primary" or "secondary," in any manner different from that of the permitted non-political speech; indeed, the proof is quite to the contrary. The government's expert witness testified that charitable solicitation or religious solicita-

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4 ". . . Respondents and the United States do not point to the 'secondary effects' of picket signs in front of embassies. They do not point to congestion, to interference with ingress or egress, to visual clutter, or to the need to protect the security of embassies. . . ." 485 U.S. at 321.

tion inside the 100-foot boundary would pose the same kind of problems as solicitation of votes, (JA 41, 49), yet they are permitted. Petitioner is thus hoisted by the testimony of his own expert.

Moreover, careful examination of § 2-7-111 in light of the testimony of the State's witness suggests that the impetus for passage of this legislation in fact was concern over the primary effect of political speech at polling places, to wit: the potential impact upon that day's election. This is indicated most clearly by the fact that discussion of political candidates not on the ballot is unaffected by § 2-7-111. Thus, the State's witness testified that a person is permitted to distribute handbills, within the 100-foot boundary, on behalf of a political figure who is not standing for election on that day's ballot. (JA 44). The import of this testimony is that solicitation on behalf of some politicians is permitted at the very same locations where solicitation on behalf of other politicians is prohibited. This anomaly clearly demonstrates that it is the message of how voters should act on election day, and nothing else, that is the aim of § 2-7-111.

This anomaly is not merely a hypothetical possibility. For example, Tennessee's presidential preference primary is held in March every four years,[5] whereas primary elections for the offices of governor, public service commissioner, members of the General Assembly, United States senator and members of the United States House of Representatives are held during August.[6] According to the uncontroverted testimony of petitioner's witness as to the correct interpretation of § 2-7-111, a person could lawfully stand inside the 100-foot boundary on the day of the August 1992 primary election and advocate the re-election or defeat of President Bush, but that same person could not at the same location advocate the re-election or defeat of the local member of the Tennessee General Assembly or of the United States House of Representatives without risking criminal prosecution.

There is absolutely no reason to believe that the solicitation of a vote for or against the President in August 1992 will have a "secondary" effect in any manner different from the "secondary"

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5 Tenn. Code Ann. § 2-13-205 (Add. 4a).

6 Tenn. Code Ann. § 2-13-202 (Add. 3a).

effect of a similar solicitation as to a Congressman or a State Senator. The only difference is the potential impact on the voter's choice of candidates in that day's election. A listener's reaction to speech, however, is not a secondary effect. *Boos v. Barry*, *supra*, 485 U.S. at 321.

Similarly, § 2-7-111 prohibits only "the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on a question." Under this statute, a person may lawfully stand within the 100-foot boundary and distribute handbills advocating a boycott of the election, while a person distributing handbills advocating a vote for or against a candidate or political party would be subject to criminal prosecution. Petitioner has not even attempted to offer any justification for prohibiting the message, "Vote," at the same time and place where the opposing message, "Don't Vote," is permitted. And whatever that justification might be, it surely has nothing to do with any "secondary effects" of the different messages.

Contrary to petitioner's mistaken assertion (Pet. Br. 14), the plurality in *Boos* did not in fact apply "secondary effects" analysis; it instead found no basis to do so because the government pointed only to the primary impact of the prohibited speech. 485 U.S. at 321. As the concurring Justices noted in *Boos*, "the challenged statute would be treated as content-based under either *Renton* or the traditional approach, and the opinion could easily have stated simply that we need not reach the issue whether *Renton* applies to political speech because even under *Renton* the law constitutes a content-based restriction." *Id.* at 338.

Another distinction between this case and *Renton* is that the unwanted so-called "secondary effects" of speech at polling places are amenable to direct regulation, unlike the anticipated urban blight, diminution of property values, and deterioration of residential neighborhoods surrounding pornographic movie theaters in *Renton*. If the Tennessee General Assembly is concerned about interference with ingress and egress to polling places, it is free to prohibit that without reference to speech. That body has already enacted non-speech-related legislation limiting the persons who may enter the polling place. *See* Tenn. Code Ann. § 2-7-103. (Add. 1a). It is already unlawful, again without reference to speech, to prevent or attempt to prevent the performance of an

election official's duties or to prevent or attempt to prevent the exercise of voting rights. *See* Tenn. Code Ann. § 2-19-103. (Add. 4a).

The *Young* and *Renton* decisions and their pornography-outlet zoning progeny[7] indicate that, in order for the "secondary effects" doctrine to apply, there must be an evidentiary showing sufficient to conclude that the legislative body of a government which seeks to restrictively zone outlets for sexual materials could have concluded that the impact of these businesses on the surrounding area is different from that of businesses not dealing primarily in sexual materials.[8] The Court of Appeals' opinion in *Renton* indicates that the Renton City Council made detailed legislative findings to this effect, *see Playtime Theaters, Inc. v. City of Renton*, 748 F.2d 527, 530-31 n.3 (9th Cir. 1984), as did the Detroit Common Council in *Young*, *supra*, 427 U.S. at 54-56 n.6 (plurality opinion), and 81 n.4 (Powell, J., concurring).

Renton by its own terms recognized that "society's interest in protecting this type of expression [pornographic movies] is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate." 475 U.S. at 49 n.2; *see also Young v. American Mini Theaters*, *supra*, 427 U.S. at 70 (per Justice Stevens, with three Justices concurring.) If First Amendment protection

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[7] *See, e.g., 11126 Baltimore Boulevard v. Prince George's County, Maryland*, 886 F.2d 1415, 1422-23 (4th Cir. 1989); *Thames Enterprises, Inc. v. City of St. Louis*, 851 F.2d 199, 201-02 (8th Cir. 1988); *Christy v. City of Ann Arbor*, 824 F.2d 489, 493 (6th Cir. 1987); *In re G & A Books, Inc.*, 770 F.2d 288, 297 (2d Cir. 1985), *cert. denied sub nom., M.J.M. Exhibitors, Inc. v. Stern*, 475 U.S. 1015 (1986); *C.I.R Corporation v. Henline*, 702 F.2d 637, 639 (6th Cir. 1983).

[8] Petitioner has also made a belated, *post hoc*, and entirely pretextual attempt to show a "secondary effects" rationalization for the Tennessee General Assembly's restricting a broad category of First Amendment protected expression by seeking refuge in the statute's legislative history. (Pet. Br. 19-22.) As a brief review of that history demonstrates, however, that effort too is unavailing. *Cf. Keego Harbor Co. v. City of Keego Harbor*, 657 F.2d 94, 98 (6th Cir. 1981).

Petitioner has not identified a scintilla of evidence that the Tennessee General Assembly considered "secondary" effects of speech *outside* polling places. There is some discussion (Pet. Br. 19a) of making the site of polling places appear "neutral" and of keeping election materials out of the polling place. A voter's perception of either neutrality or favoritism, however, is again a *primary* effect of speech.

is "at its zenith" regarding the kind of speech regulated in the matter *sub judice* and in *Meyer v. Grant*, *supra*, *Renton* and *Young* suggest that protection of the location of pornographic movie houses is at the corresponding nadir.

In concurring in the application of a state public indecency statute to prohibit barroom-style nude dancing, one member of this Court recently opined, applying a "secondary effects" theory, "I reach this conclusion mindful, as was the Court in *Renton*, that the protection of sexually explicit expression may be of lesser societal importance than the protection of other forms of expression." *Barnes v. Glen Theatre*, *supra*, 59 U.S.L.W. at 4752, n.3 (Souter, J., concurring in the judgment). As the Justice there elaborated, ". . . the secondary effects rationale on which I rely here would be open to the question if the State were to seek to enforce the statute by barring expressive nudity in classes of productions that could not readily be analogized to the adult films at issue in *Renton* . . ." *Id.* at n.2.

Far from being "secondary effects" of pornographic materials, one of the principal interests advanced by petitioner and his *amici* -- that of encouraging maximum participation by voters whose "options are to simply not exercise their constitutional right to vote or to face a crowd surrounding the entrance" (Pet. Br. 28) -- again focuses on a primary effect: the listeners' reactions to pure political speech. *Cf. Boos v. Barry*, *supra*, 485 U.S. at 321. As the state court correctly noted, "if the State's interest in preventing voter interference . . . consists only of shielding voters from annoying campaign workers armed with cheap ball point pens and fingernail files embossed with a candidate's name, this interest cannot justify an infringement upon free speech rights." (802 S.W.2d at 214; Pet. App. 16a).

City of Renton, like its precursor, *Young v. American Mini Theatres*, *supra*, involved "merely a decision by the city to treat certain movie theaters differently because they have markedly different effects upon their surroundings." 475 U.S. at 49, quoting concurring opinion of Justice Powell in *Young*, 427 U.S. at 82, n.6. This Court found the ordinance in *Renton* to be "'narrowly tailored' to affect *only* that category of theaters shown to produce the unwanted secondary effects[.]" 475 U.S. at 52 (emphasis added). This necessarily indicates that a showing of differential impact of different kinds of speech, wholly absent from the instant

case, is a condition precedent to invocation of the "secondary effects" doctrine. As the discussion above makes clear, there is nothing "secondary" about the intended effects that the State wishes to prevent here. They are the effects on the voters of election day campaigning, close to polling places where attention and interest are at their height. Accordingly, *Renton* is simply irrelevant to this case.

The statutes invalidated by the Supreme Court of Tennessee were enacted as part of an omnibus election bill, Tenn. Public Acts 1972, Chapter 740. This bill, a copy of which was appended to the reply brief filed on behalf of respondent in the Supreme Court of Tennessee, covers 183 single-spaced pages. Any discussion of the effects, "primary" or "secondary," of the dissemination of messages prohibited by the invalidated statutes is remarkably absent. Nowhere does the General Assembly make any finding that the solicitation of votes or the display or distribution of campaign materials at polling places has any different effect from that of other messages as to which § 2-7-111 is silent. Neither does the portion of the report of the Tennessee Law Revision Commission appended to petitioner's brief in this Court (Pet. Br. 41a-63a) discuss any difference between the effects of the speech criminalized by § 2-7-111 and the speech left untouched by it.

Petitioner also seeks to save § 2-7-111 by arguing that the places it covers are not public fora, and hence speech on those locations can be more readily restricted. (Pet. Br. 36-38). Aside from the fact that no case allows content-based restrictions of the kind at issue here on non-public fora, petitioner is in error largely because he fails to appreciate the public nature of polling places in Tennessee. In determining the type of forum, and hence the extent of permitted regulation, speech on governmental property that has been traditionally open to the public for expressive activity, such as public streets and parks, is protected by the strict scrutiny test, as is speech on property that the Government has expressly dedicated to expressive activity. *United States v. Kokinda*, 110 S. Ct. 3115, 3119 (1990); *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45-46 (1983). Both of these criteria suggest that polling places and their environs are public fora.

The record is clear that the 100-foot radius in many instances extends onto public streets and sidewalks. 802 S.W.2d at 213; Pet.

App. 15a. In addition, the entire grounds of some polling places are inside the 100-foot radius. (JA 42). And in at least one instance, the 100-foot boundary extends across a street from the entrance to a polling place. (*Id.* at 24).

Public streets and sidewalks are "traditional public fora that 'time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Boos v. Barry*, *supra*, 485 U.S. at 318, quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939). Such places "occupy a 'special position in terms of First Amendment protection.'" *Ibid.*, quoting *United States v. Grace*, *supra*, 461 U.S. at 180.

Petitioner's reliance on *United States v. Kokinda*, *supra*, is misplaced. There is no proof in the record that any street or sidewalk near to polling places is distinguishable from any other street or sidewalk in Nashville and Davidson County. Nonetheless, petitioner contends (Brief 38), without reference to the record, that "persons entering the clearly marked 100 foot boundary on election day are there only to vote." There is no evidence whatever that ordinary pedestrian and vehicular traffic on any sidewalks or streets is interrupted or suspended on election days. The streets and sidewalks referred to in the instant case in fact resemble the municipal sidewalk running parallel to the road in *Kokinda*, 110 S.Ct. at 3120, and the sidewalks comprising the outer boundaries of the grounds of this Court in *United States v. Grace*, 461 U.S. at 179. Both are examples of public forum properties where regulation of speech is subject to strict scrutiny analysis. *See Boos v. Barry*, *supra*, 485 U.S. at 318. Most important of all, *Kokinda* was a case in which the speech was the solicitation of funds, which impeded the entrance to the Post Office. Whatever that case may stand for, it surely has no applicability here since the conduct forbidden by Tennessee is pure political speech, and the permitted conduct extends to the very solicitation of funds held unlawful in *Kokinda*, so long as the money is not a request for a candidate who is on the ballot that day.

As noted above, regulation of speech on property that the Government has dedicated to expressive activity is subject to strict scrutiny. *Kokinda*, 110 S.Ct. at 3119; *Perry Education Association*, *supra*, 460 U.S. at 45. The claim by petitioner (Pet. Br. 38) and his *amici* that Tennessee has not dedicated polling places and their environs as public fora necessarily presupposes the spe-

cious notion that voting is not expressive activity. As this Court has noted, "From time immemorial an election to public office has been in point of substance no more and no less than the expression by qualified electors of their choice of candidates." *United States v. Classic*, 313 U.S. 299, 318 (1941). Thus, at least for election days, when people can freely come and go to vote, there is no question that these places have been dedicated to the election process, and surely the private properties, or those belonging to localities, rather than the State, have not been conscripted by the State for any other purpose, as would be necessary to make them less than public fora.

Petitioner, while acknowledging that a majority of this Court has never done so (Pet. Br. 16), suggests (albeit citing no authority therefor) that a regulation on core political speech can be both "subject-matter based" and "content-neutral." This Court has never so held, and it should not do so here. To the contrary, the Court has recognized that the First Amendment will not permit a regulation to single out election-related speech for treatment different from that afforded other messages. In *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), the Court upheld a municipal ordinance which prohibited the posting of signs on public property. The Court specifically rejected a suggestion that an exception should be made for political campaign signs:

> ... [It is not] clear that some of the suggested exceptions would even be constitutionally permissible. For example, even though political speech is entitled to the fullest possible measure of constitutional protection, there are a host of other communications that command the same respect. An assertion that "Jesus Saves," that "Abortion is Murder," that every woman has the "Right to Choose," or that "Alcohol Kills," may have a claim to a constitutional exemption from the ordinance that is just as strong as "Roland Vincent--City Council." To create an exception for appellees' political speech and not these other types might create a risk of engaging in constitutionally forbidden content discrimination. *See, e.g., Carey v. Brown*, 447 U.S. 455 (1980); *Police Department of Chicago v. Mosley*, 408

U.S. 92 (1972).

466 U.S. at 816 (citations and footnote omitted).

Petitioner's argument illustrates the danger of applying *City of Renton*-type "secondary effects" analysis to purely political speech. If petitioner's line of reasoning were followed, several content-based regulations of speech which have been invalidated by this Court could arguably have been upheld if the government had pointed to *post hoc*, pretextual "secondary effects" reasons to justify what is otherwise an unmistakably content-based regulation. For example, under this theory, the flag-burning statute invalidated in *United States v. Eichman*, 110 S. Ct. 2404 (1990), could have been sustained as a measure to promote fire safety or to curb air pollution associated with smoke from burning United States flags. This Court in *Police Department v. Mosley*, *supra*, properly rejected the argument that demonstrations at schools by civil rights groups, students, parents or "concerned citizens" are more likely than labor picketing to produce the unwanted "secondary effects" of disruption of the educational process or the public peace, window smashing and arson. 408 U.S. at 100-01 and n.7.

There is another aspect to the operation of § 2-7-111 that further underscores the correctness of the ruling below. As respondent testified, she has received political communications at polling places, and in some cases her vote has been swayed by information she has received at the polls. (JA 28-29). She also testified to the importance of this last-minute information for local offices and for positions at the lower end of the ballot. (JA 21-22).

This Court has recognized a First Amendment right to receive information and ideas; freedom of speech necessarily protects the right to receive communications. *Virginia Pharmacy Board*, *supra*, 425 U.S. at 757. "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, *supra*, 435 U.S. at 783. A "highly paternalistic approach," limiting what people may hear about the qualifications of political candidates, is generally suspect. *Eu v. San Francisco County Democratic Central Committee*, *supra*, 489 U.S.

at 223. A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with skepticism. *Id.* at 228; *Tashjian v. Republican Party of Connecticut*, *supra*, 479 U.S. at 221; *Anderson v. Celebrezze*, 460 U.S. 780, 798 (1983).

Nonetheless, the Tennessee General Assembly has apparently decided that some kinds of electioneering are inappropriate or undignified, without articulating any legitimate State interest in restricting these methods. In an ideal world, where antiseptic elections are conducted in a vacuum, it may be that voters should decide in advance of going to the polling place whom to support and that last minute appeals to emotion or friendship would be unavailing. The uncontroverted testimony in this case, however, is that the real world does not work that way. (JA 22, 29).

Petitioner has never at any point of this litigation offered any justification for limiting the First Amendment right of voters to receive information at polling places in the chilling manner effected by § 2-7-111. A general interest in insulating voters from outside influences is insufficient to justify speech regulation. "In the free society ordained by our Constitution it is not the government, but the people--individually as citizens and candidates and collectively as associations and political committees--who must retain control over the quantity and range of debate on public issues in a political campaign." *Buckley v. Valeo*, *supra*, 424 U.S. at 57.

While voting is unquestionably an expressive activity, it is but one part of the speech encompassed by the electoral process and protected by the First Amendment. "[T]he election campaign is a means of disseminating ideas as well as attaining political office." *Eu v. San Francisco Democratic Committee*, *supra*, 489 U.S. at 223. The expressive activity occurring inside polling places, *i.e.* voting, is bound up tightly with the discussion of candidates and issues that occurs in myriads of locations outside polling rooms, including streets, parks, sidewalks, newspaper editorial offices, and the grounds outside polling places. Advocacy of the election or defeat of particular candidates or political parties is therefore an essential component of the expressive activity of which polling places are expressly made a part. The First Amendment does not permit a State to say that all speech about elections in the vicinity of the polling place is out of bounds,

so that both the listener and the speaker are denied the right to discuss what is foremost on their minds. Such a restriction would be bad enough if it applied to all speech within the 100-foot radius, but to single out political speech for exclusion turns the First Amendment on its head and should be rejected, just as the Supreme Court of Tennessee did.

II. REGARDLESS OF THE STANDARD OF REVIEW, § 2-7-111 IS INVALID BECAUSE IT IS NOT NARROWLY TAILORED TO ADVANCE THE ENDS ASSERTED FOR IT.

Petitioner contends (Brief at 8) that § 2-7-111 is merely a regulation of the time, place, and manner of speech and can be upheld as such. The principal difficulty with this approach is that a "major criterion for a valid time, place and manner restriction is that the restriction 'may not be based upon either the content *or* subject matter of speech'." *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981) (emphasis added) quoting *Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York*, *supra*, 447 U.S. at 536; *Regan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984). *See also Carey v. Brown*, *supra*, 447 U.S. at 470 (time, place, and manner restrictions must be "applicable to all speech *irrespective of content*") (emphasis in original); *Erznoznik v. City of Jacksonville*, *supra*, 422 U.S. at 209. But even under time, place, and manner analysis, however, § 2-7-111 is unconstitutional because, as the Supreme Court of Tennessee correctly found (802 S.W.2d at 213; Pet. App. 15a), the statute is not narrowly tailored to advance the State's asserted interests.

The principal difference between the "narrow tailoring" element of the time, place, and manner analysis and strict scrutiny is that, under the latter, a court is required to examine whether the challenged regulation is "the least restrictive means" of achieving the asserted governmental interest. This Court in *Ward v. Rock Against Racism*, *supra*, 491 U.S. at 798-99, elaborated on the differences between the two requirements:

> Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate content-neutral interests but that it need not be the least-restrictive or least-intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied "so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." ... To be sure, this standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. . . . [Citations and footnotes omitted.]

Tenn. Code § 2-7-111 clearly "burden[s] more speech than is necessary to further the government's legitimate interests." This statute bans all "display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on a question" within the 100-foot boundary, without regard to whether the prohibited communication disrupts peace, order, or decorum at the polling place, interferes with the conduct of the election, or creates a risk of interference with voting, confusion, mistakes, or overcrowding -- the interests asserted by the State to defend this law.

As the Supreme Court of Tennessee cogently noted (802 S.W.2d at 213; Pet. App. 15a), petitioner's proof as to the potential interference with the electoral process "concerned the numbers of persons present in the polling place itself, not the numbers of persons outside the polls." (JA 40, 48-49). Since the challenge is to the effect of § 2-7-111 outside the polling place, it is apparent that it sweeps more broadly than is necessary to achieve the State's asserted interests. *Cf. Firestone v. News-Press Publishing Co., Inc.*, 538 So.2d 457, 459-60 (Fla. 1989) (statute which prohibited persons not in line to vote from coming within 50 feet of the polling place upheld only as to persons inside the polling room; restriction of activity outside polling place invalidated).

Examined from another perspective, the requirement of

narrow tailoring for a time, place, and manner regulation is satisfied only "so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, *supra*, 491 U.S. at 799, quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985). It is therefore appropriate to examine what conduct is prohibited at or near polling places by existing Tennessee statutes other than § 2-7-111 to see how necessary it is.

This Court need not speculate about the law of Tennessee since that State's Supreme Court has found in this very case that other statutes make the restrictions imposed here unnecessary to advance those ends. Thus it concluded (802 S.W.2d at 214; Pet. App. 17a) that Tenn. Code Ann. §§ 2-19-101 (Add. 4a) and 2-19-115 (Add. 5a) already prohibit voter interference and intimidation, independent of any restrictions on pure speech. In addition, Tenn. Code Ann. § 2-19-103 (Add. 4a) criminalizes any action, again without reference to speech, taken "for the purpose of preventing any person's performance of his duties under this title or exercise of his rights" under the election code. Most significantly for the claims made about possible confusion and mistakes in the casting of ballots, the persons who may enter the actual polling place during voting hours are limited by Tenn. Code Ann. § 2-7-103 (Add. 1a) to "election officials, voters, persons properly assisting voters, the press, poll watchers appointed under § 2-7-104 [Add. 2a] and others bearing written authorization from the county election commission."

That Tenn. Code Ann. § 2-7-111 treats one category of speech more stringently than other messages raises questions about whether the statute is "narrowly tailored." Where speech of one category is so burdened, in order for a court to determine that the regulation is "narrowly drawn to further a sufficiently substantial governmental interest," the government "must be prepared to articulate, and support, a reasoned and significant basis for its decision" to single out a particular category of speech. *Schad v. Borough of Mount Ephraim*, *supra*, 452 U.S. at 77 (Blackmun, J., concurring). This Court in *City of Renton v. Playtime Theatres*, *supra*, found the challenged zoning ordinances to be narrowly tailored because they affected "*only* that category of theaters shown to produce the unwanted secondary effects . . ." 475 U.S. at 52 (emphasis added).

Here, the situation is precisely the opposite. The uncontroverted testimony of petitioner's own witness is that the communication outside polling places of messages permitted by § 2-7-111 would pose exactly the same kind of problem as the forbidden solicitation of votes, carrying of signs, and wearing of buttons (JA 41):

> Q. Ms. Alexander, if there were persons at the polling places soliciting for charitable organizations inside that 100-foot boundary, would that pose the same kind of problem as persons soliciting votes inside that boundary?
>
> A. Yes, it would. And if it posed the problem, our inspectors would take care of it. We have to assure that there is no interference from anyone, as far as the voting process is concerned.
>
> Q. And isn't it true that if there is such interference, there are statutes other than the one challenged at bar, today, that are able to deal with that?
>
> A. Yes, there are statutes.

This testimony demonstrates *both* that Tenn. Code Ann. § 2-7-111 is underinclusive and that there are other statutes sufficient to correct the problems associated with solicitations outside polling places. If these other statutes are adequate to take care of problems associated with speech permitted by § 2-7-111 if such speech creates interference with the electoral process, then they are surely adequate to remedy any problems associated with solicitation of votes or the display or distribution of campaign materials which similarly interfere with the electoral process.

Petitioner must surmount yet another obstacle if he is to justify this provision as a reasonable time, place, and manner regulation: the law must leave open ample alternative channels for communication of the restricted information. *Ward v. Rock Against Racism*, *supra*, 491 U.S. at 791. Petitioner contends that this requirement is met because respondent is free to solicit votes outside the 100-foot boundary. (Pet. Br. 31-32). In making this

argument, petitioner ignores both reality and the proof at trial.

The State's witness acknowledged that at some polling places the entire grounds of the polling place are inside the 100-foot radius. (JA 42). Furthermore, at some polling places, because there is a parking area less than 100 feet from the door, poll workers are prohibited from soliciting voters who park within the 100-foot area. (*Ibid.*) Respondent also testified that, at at least one polling place, the boundary extends to the other side of a busy highway, so that there is no way to reach voters and be within the law. (*Id.* at 24).

Recognizing that the 100-foot radius, not to mention the limitations on signs, handbills, and posters on the grounds, puts a serious roadblock in the way of political speech near the polling place, petitioner makes a more frontal assault by arguing that "Ms. Freeman has 562 square miles of Davidson County except the 100 foot radius of entrances to the 164 polling places to solicit votes on election day." (Pet. Br. 32). That argument is as cogent as saying that the Birmingham newspaper editor in *Mills v. Alabama*, *supra*, had 364 days out of every year to write editorials urging people to vote one way or another in a public election and therefore had no basis for complaining about missing election day.

At bottom, petitioner's argument is merely a warmed-over version of a proposition that has been repeatedly rejected by this Court: "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schad v. Borough of Mount Ephraim*, *supra*, 452 U.S. at 76-77; *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 556 (1975); *Schneider v. State*, 308 U.S. 147, 163 (1939).

Here, as in *Meyer v. Grant*, *supra*, 486 U.S. at 424, the challenged statutes:

> restrict[] access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That it leaves open "more burdensome" avenues of communication, does not relieve its burden on First Amendment expression. [Citations omitted.] The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective

> means for so doing.

The uncontroverted testimony of respondent is that in-person solicitation at polling places is the most effective means of communication for many local offices. (JA 22-23). Petitioner nonetheless contends (Pet. Br. 31) that "[e]ven where a voter may park a vehicle within the one hundred foot boundary, the voter may meet with campaign workers soliciting votes beyond that boundary." As respondent's testimony suggests, that simply does not happen. (JA 24). As this Court has stated, "[w]e are aware of no general principle that freedom of speech may be abridged when the speaker's listeners could come by his message by some other means, such as seeking him out and asking him what it is." *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council*, *supra*, 425 U.S. at 757, n.15. Yet, despite this clear precedent, petitioner insists that poll workers like respondent must go elsewhere to express their political views, and that listeners willing to hear them must be denied access to information that is directly relevant to the task at hand. And all of this is done to protect interests that the Tennessee Supreme Court has held can be adequately safeguarded by other laws. Accordingly, even under the less demanding time, place, and manner standard, § 2-7-111 cannot be sustained.

CONCLUSION

Petitioner has failed to show, regardless of the standard of review, that the First Amendments permits a State to criminalize the display and distribution of campaign materials and the solicitation of votes within 100 feet of the entrance to polling places, while permitting all non-political messages and even some other political messages to be communicated at the same time and place. There is no reason to disturb either the result or the sound reasoning of the Supreme Court of Tennessee. The judgment below should therefore be affirmed.

Respectfully submitted,

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STATUTORY ADDENDUM:

The full text of the Tennessee statutes cited in this brief is set forth below:

Tenn. Code Ann. § 2-3-107 (1972) states:

> **2-3-107. Polling places – Physical requirements – Use of public buildings – Rental for private buildings.** – (a) The county election commission shall designate as polling places only rooms which have adequate heat, light, space and other facilities, including a sufficient number of electrical outlets where voting machines are used, for the comfortable and orderly conduct of elections.
>
> (b)(1) The commission shall, insofar as practicable, arrange for the use of public schools and other public buildings for polling places.
>
> (2) Upon application of the commission, the authority which has the control of any building or grounds supported by taxation under the laws of this state shall make available the necessary space for the purpose of holding elections and adequate space for the storage of voting machines without charge. A reasonable sum may be paid for necessary extra janitor service.
>
> (c) When polling places are established in private buildings, the commission may pay a reasonable rental. [Acts 1972, ch. 740, § 1; T.C.A., § 2-312.]

Tenn. Code Ann. § 2-7-103 (1972) states:

> **2-7-103. Persons allowed in polling place.** – (a) No person may be admitted to a polling place while the procedures required by this chapter are being carried out except election officials, voters, persons properly assisting voters, the press, poll watchers appointed under § 2-7-104 and others bearing written authorization from the county election commission.
>
> (b) Candidates may be present after the polls close.
>
> (c) No policeman or other law-enforcement officer

may come nearer to the entrance to a polling place than ten feet (10') or enter the polling place except at the request of the officer of elections or the county election commission or to make an arrest or to vote.

(d) No person may go into a voting machine or a voting booth while it is occupied by a voter except as expressly authorized by this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-703.]

Tenn. Code Ann. § 2-7-104 (1988) states:

2-7-104. Poll watchers. -- (a) Each political party and any organization of citizens interested in a question on the ballot or interested in preserving the purity of elections and in guarding against abuse of the elective franchise may appoint poll watchers. The county election commission may require organizations to produce evidence that they are entitled to appoint poll watchers. Each candidate in primary elections and each independent candidate in general elections may appoint one (1) poll watcher for each polling place. All appointments of watchers shall be in writing and signed by the persons or organizations authorized to make the appointment. All poll watcher names shall be submitted to the county election commission no later than noon of the day before the election.

(b) Each political party which has candidates in the election and each citizens' organization may have two (2) watchers at each polling place. One (1) of the watchers representing a party may be appointed by the chairperson of the county executive committee of the party and the other by a majority of the candidates of that party running exclusively within the county in which the watchers are appointed. If the candidates of a party fail to appoint the watchers by noon on the third day before the election, the chairperson of the county executive committee of the party may appoint both watchers representing his party. In addition, each candidate in a general election may appoint one (1) poll watcher for each polling place.

(c) Upon arrival at the polling place a watcher shall

display his appointment to the officer of elections and sign the register of watchers. Poll watchers may be present during all proceedings at the polling place governed by this chapter. They may watch and inspect the performance in and around the polling place of all duties under this title. A watcher may, through the judges, challenge any person who offers to vote in the election. A watcher may also inspect all ballots while being called and counted and all tally sheets and poll lists during preparation and certification. If a poll watcher wishes to protest any aspect of the conduct of the election, he shall present his protest to the officer of elections or to the county election commission or to an inspector. The officer of elections or county election commission shall rule promptly upon the presentation of any protest and take any necessary corrective action.

(d) No watcher may interfere with any voter in the preparation or casting of his ballot or prevent the elections officials' performance of their duties. No watcher may observe the giving of assistance in voting to a voter who is entitled to assistance. Watchers shall wear poll watcher badges with their names and their organization's name but no campaign material advocating voting for candidates or positions on questions. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 3; T.C.A., § 2-704; Acts 1981, ch. 478, § 16; 1988, ch. 933, § 11.]

Tenn. Code Ann. § 2-13-202 (1972) states:

2-13-202. Offices for which candidates are chosen in primary elections. -- Political parties shall nominate their candidates for the following officers by vote of the members of the party in primary elections at the regular August election:

(1) Governor;
(2) Public service commissioner;
(3) Members of the general assembly;
(4) United States senator; and
(5) Members of the United States house of representatives. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1314.]

Tenn. Code Ann. § 2-13-205 (1986) states:

2-1-3-205. Presidential preference primaries – Date of election – Failure to have candidate's name on ballot. – On the second Tuesday in March before presidential electors are elected a presidential preference primary shall be held for each statewide political party. If no candidate will appear on the presidential preference primary ballot of a political party under § 2-5-205, no presidential preference primary shall be held for that political party. [Acts 1972, ch. 740, § 1; 1976, ch. 439, § 3; 1977, ch. 316, § 3; T.C.A., § 2-1316; Acts 1986, ch. 562, § 5.]

Tenn. Code Ann. § 2-19-101 (1972) states:

2-19-101. Interfering with nominating meeting or election. – A person commits a misdemeanor if he:

(1) Breaks up or attempts to break up any legally authorized nominating meeting or election by force or violence;

(2) Assaults or attempts to assault the persons conducting the meeting or the election officials;

(3) Destroys or carries away or attempts to destroy or carry away a ballot box or voting machine; or

(4) Uses force or violence in any other way to prevent the fair and lawful conduct of the nominating meeting or election. [Acts 1972, ch. 740, § 1; T.C.A. § 2-1901.]

Tenn. Code Ann. § 2-19-103 (1972) provides:

2-19-103. Interference with another's duties or rights. – A person commits a misdemeanor if he knowingly does any act for the purpose of preventing any person's performance of his duties under this title or exercise of his rights under this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1903.]

Tenn. Code Ann. § 2-19-115 (1972) states:

2-19-115. Violence and intimidation to prevent voting. – It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) By force of threats to prevent or endeavor to prevent any elector from voting at any primary or final election;

(2) To make use of any violence, force or restraint, or to inflict or threaten the infliction of any injury, damage, harm or loss; or

(3) In any manner to practice intimidation upon or against any person in order to induce or compel him to vote for any particular person or measure, or on account of such person having voted or refrained from voting in any such election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1915.]

Tenn. Code Ann. § 2-19-119 (1972) states:

2-19-119. Violation of § 2-7-111 while boundary signs are posted. – A person commits a misdemeanor if he violates § 2-7-111 while boundary signs are posted. [Acts 1972, ch. 740; T.C.A., § 2-1919.]